

The claimant alleged that while working on February 26, 2003, he injured his left shoulder and knee when he slipped and fell. Claimant reported the accident to respondent's secretary and testified that he told her he injured his left knee and shoulder. Claimant did not seek medical treatment.

Respondent's secretary, Mary D. Dickerson, testified that part of her duties included taking injury reports from employees and reporting them to the insurance company. She testified that claimant reported an injury on February 26, 2003, and she filled out the accident report. The report indicated claimant had injured his right knee. Moreover, it indicated a right knee injury in three separate locations on the form. Claimant examined the form after it was completed and noted some corrections that needed to be made on the form but did not request that the right knee references be changed or a shoulder injury added. Ms. Dickerson noted claimant reported injury to his right knee and did not report any shoulder injury.

It is undisputed claimant was receiving ongoing medical treatment from a rheumatologist. Medical records indicated that although claimant continued to receive treatment in March and April he never mentioned any work-related incident even though he complained of bilateral shoulder and knee pain. It was not until May 2003 that claimant sought medical treatment for his left shoulder and knee which he attributed to the prior slip and fall incident in February 2003.

In workers' compensation litigation, it is claimant's burden to prove entitlement to benefits by a preponderance of the credible evidence.¹ This matter hinges almost entirely upon the credibility of the witnesses. Claimant and Ms. Dickerson testified before the ALJ at the preliminary hearing. In denying claimant the benefits requested, the ALJ made a specific finding that Ms. Dickerson was a credible witness and more persuasive than claimant regarding the situs of the alleged injury. The Board generally will give some deference to the determination by an ALJ regarding the credibility of the witnesses who testify before him or her. And in this instance, the claimant's contemporaneous medical records after the date of accident do not contain mention of the slip and fall incident even though claimant complained of pain to the shoulders and knees. And the medical records indicate claimant's shoulder and knee complaints had been ongoing for some time. Consequently, the Board affirms the ALJ's determination that claimant failed to meet his burden of proof that he suffered an accidental injury to his left knee and shoulder arising out of and in the course of his employment.

WHEREFORE, it is the finding of the Board that the Order of Administrative Law Judge Steven J. Howard dated August 4, 2003, is affirmed.

IT IS SO ORDERED.

¹ See K.S.A. 44-501 and K.S.A. 2002 Supp. 44-508(g).

Dated this _____ day of October 2003.

BOARD MEMBER

c: Michael W. Downing, Attorney for Claimant
C. Anderson Russell, Attorney for Respondent and its Insurance Carrier
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director